

SUPPLEMENTAL AGREEMENT NO. 2

STATE OF NEBRASKA DEPARTMENT OF ROADS
CITY OF LINCOLN PARKS & RECREATION DEPARTMENT
PROJECT NO. ENH-55(160)
CONTROL NO. 12879
JAMAICA NORTH TRAIL – PHASE 2 (B)

THIS SUPPLEMENTAL AGREEMENT, made and entered into by and between the City of Lincoln Parks & Recreation Department hereinafter referred to as the "City", and the State of Nebraska, Department of Roads, hereinafter referred to as the "State", and hereinafter referred to collectively as the "Parties".

WITNESSETH:

WHEREAS, the Parties hereto entered into an Original Agreement (YL0723) executed by the City March 21, 2007 and by the State April 23, 2007, and Supplemental Agreement No. 1 executed by the City February 10, 2009 and by the State March 9, 2009, providing for the construction of Project No. ENH-55(160), and

WHEREAS, it now becomes necessary that said agreement be supplemented to provide for the State to advertise, conduct a letting, and receive bids for the project and pay all eligible project costs directly to the consultants and contractors, and

WHEREAS, it now becomes necessary to supplement the agreement to extend the deadline for securing a construction contract to construct the project, and

WHEREAS, Federal regulations provide that the State shall have the responsibility for all Federal-Aid projects, and will be responsible for insuring that such projects receive the same degree of supervision and inspection as projects constructed under a contract let and directly supervised by the State and that the project is completed in conformity with approved plans and specifications, and

WHEREAS, the City has designated an available fully-qualified public employee to act as "Responsible Charge" (RC) for the subject Federal-aid Transportation project, and

WHEREAS, the RC has successfully completed training required by the State to serve as an RC for the Federal-aid Transportation project, and

WHEREAS, the RC will be in day-to-day responsible charge of all aspects of the project, from planning through post-construction activities and maintain the project's eligibility for Federal-aid Transportation project funding, and

WHEREAS, the City understands that it must comply with all terms of 23 C.F.R. 635.105 order for this Federal-aid transportation project to be eligible for Federal funding, and

WHEREAS, the City will support the RC and is ultimately responsible to ensure that, at a minimum, (1) the project receives independent and careful development, supervision and inspection, (2) the project is constructed in compliance with the plans and specifications, (3) all aspects of the project from planning through construction activities, including all environmental commitments remain eligible for Federal funding, and (4) decisions made and actions taken for the project have adequate supporting documentation filed in an organized fashion, and

WHEREAS, this project has been designated as a full Federal oversight project, and

WHEREAS, it is the desire of the City that the project be constructed under the designation of Project No. ENH-55(160), as evidenced by the Resolution of the City Council dated the _____ day of _____, 20____, attached and identified as EXHIBIT "A" and made a part of this agreement, and

WHEREAS, the City is responsible for any costs not paid for by Federal funds.

NOW THEREFORE, in consideration of these facts, the Parties hereto agree as follows:

SECTION 1. Definitions. For purposes of this agreement, the following definitions will apply:

Fully Qualified means a person who has satisfactorily completed all applicable State training courses and who has met the other requirements necessary to be included on the State list of qualified Local Public Agency "Responsible Charge" (RC's).

Full-Time Public Employee means a public employee who meets all the requirements and is afforded all the benefits of full-time employees as that phrase is applied to other employees of the employing entity. A person is not a full-time employee if that person provides outside private consulting services, or is employed by any private entity, unless that person can prove to the State in advance, that employee's non-public employment is in a field unrelated to any aspect of the project for which Federal-aid is sought.

Public Employee means a person who is employed solely by a county, a municipality, a political subdivision, a Native American tribe, a school district, another entity that is either designated by statute as public or quasi-public, or entity included on a list of entities determined by the State and approved by the Federal Highway Administration (FHWA), as fulfilling public or quasi-public functions.

Responsible Charge means the public employee who is fully empowered by the City and has actual day-to-day working knowledge and responsibility for all decisions related to all aspects of the Federal-aid project from planning through construction project activities, including all environmental commitments. The RC is the day-to-day project manager, and the City's point-of-contact for the project. Responsible charge does not mean merely delegating the various tasks; it means active day-to-day involvement in identifying options, working directly with

stakeholders, making decisions, and actively monitoring project construction. It is understood that RC may delegate or contract certain technical tasks associated with the project so long as RC actively manages and represents the owner's interests in the delegated technical tasks.

SECTION 2. This project has been designated as a full Federal oversight project and the State will present this project to the FHWA for its approval.

SECTION 3. Responsible Charge (RC)

A. The City hereby designates JEFFY GENOIT as the City's RC for this project.

B. Duties and Assurances of the City for this project.

1. The City has authorized and fully empowered the RC to be in day-to-day responsible charge of the subject Federal-aid project; this does not mean merely supervising, overseeing or delegating various tasks, it means active day-to-day involvement in the project including identifying issues, investigating options, working directly with stakeholders, and decision making.
2. The RC is a full-time employee of the City.
3. The RC is fully qualified and has successfully completed required training to serve as an RC.
4. The City shall allow the RC to spend all time reasonably necessary to properly discharge all duties associated with the project, including ensuring that all aspects of the project, from planning through post-construction activities, remain eligible for Federal-aid highway project funding.
5. The City shall not assign other duties to the RC that would affect his or her ability to properly carry out the duties set out in this agreement.
6. The City shall provide necessary office space, materials and administrative support for the RC.
7. The City shall fully cooperate with, support and not unreasonably interfere with day-to-day control of the RC concerning the acts necessary for making the project eligible for Federal funding.
8. The City shall take all necessary actions and make its best good faith efforts to comply and assist the RC in complying with all Federal and State requirements and policies applicable to Federal-aid transportation projects, including, but not limited to, all applicable requirements of 23 CFR 635.105.
9. The City agrees to take all necessary actions and make its best good faith efforts to ensure that the RC's work on the project would be deemed to meet the same standards that the State must meet under 23 CFR 635.105.

10. The City shall comply with the conflict-of-interest requirements of 23 CFR 1.33.
 11. The City shall notify the State immediately in the event the designated RC(s) will no longer be assigned to the project. A supplemental agreement designating a replacement RC will be required by the State.
 12. The City agrees that it is ultimately responsible for complying with all Federal and State requirements and policies applicable to Federal-aid highway projects. This includes meeting all post-construction environmental commitments. The City understands that failure to meet any eligibility requirements for Federal funding may result in the loss of all Federal funding for the project. In the event that the acts or omissions of RC, the City or its agents or representatives result in a finding that a project is ineligible for Federal funding, the City will be required to repay the State some or all previously paid Federal funds and any costs or expenses the State has incurred for the project, including but not limited to, those costs for the RC.
- C. The City understands that the following are the duties of the RC:
1. Serve as the City's contact for issues or inquiries for Federal-aid projects assigned by the City
 2. Ensure that all applicable Federal, State and local laws, regulations, policies and guidelines are followed during the development and construction of the project.
 3. Know and follow the State's LPA Guidelines Manual for Federal-Aid Projects.
 4. Have active day-to-day involvement in identifying issues, investigating options, working directly with stakeholders, and decision making.
 5. Ensure that the project plans and specifications are sealed, signed and dated by a professional licensed engineer in the State of Nebraska, and that estimates have been prepared and the construction has been observed by a professional engineer licensed in the State of Nebraska or a person under direct supervision of a professional engineer licensed in the State of Nebraska (reference NEB. Rev. Stat. §81-3445).
 6. Competently manage and coordinate the project day-to-day operations, including all project related decisions, on behalf of the City, which includes the City's governing body, staff and any extended staff dedicated to the project such as consulting engineers.
 7. Ensure that project documents are thoroughly checked, reviewed and have had quality control measures applied, prior to submitting to the State and/or FHWA.
 8. Monitor the progress and schedule of the project and be responsible for ensuring that the project is completed on time in accordance with established milestone dates.

9. Notify and invite the State to all coordination meetings, environmental scoping meetings, Plan-In-Hand review, public meetings/hearings.
10. Keep the State informed of all project issues.
11. Arrange preconstruction conference.
12. Keep the State's District Construction Representative informed of project start, and ending dates and other scheduled construction milestones.
13. Prepare contractor change orders and supplemental agreements.
14. Properly serve as the City's representative, and to visit the project site during construction frequency commensurate with the magnitude and complexity of the project.
15. Ensure that proper construction management processes have been developed and implemented for the project.
16. Serve as a steward of the public funds, i.e. ensure that the public gets what it is paying for.
17. Attend all required training including the annual workshop.
18. Fulfill continuing education requirements as specified in the State's LPA Guidelines Manual for Federal-aid projects.

SECTION 4. The State and the City agree the State will advertise, conduct a letting, and receive bids for the City on the contemplated improvement. The selection of the lowest bidder and the awarding of a contract or contracts must be concurred in and signed by the City prior to award.

SECTION 5. The State will pay the contractor and consultant directly as follows.

- A. All project contractor construction costs will be paid directly to the contractor by the State. Progress invoices and final invoices shall be prepared by the City using **Site Manager software** and must be approved by the City Responsible Charge before payment to the Contractor can be made by the State.
- B. The City Responsible Charge shall submit the City approved **construction engineering** invoice and progress report to the State District Construction Representative for approval of payment, with a copy to the State's LPD Enhancement Program Manager and to the Enhancement Program Consultant. The State District Construction Representative will forward the invoice and progress report to the State's Planning and Project Development Division for payment processing with a copy to the State's LPD Enhancement Program Manager and the Enhancement Program Consultant. The State will make payment directly to the consultant for the construction engineering.

- C. The City Responsible Charge shall submit the City approved **preliminary engineering** invoice and progress report to the State's LPD Enhancement Program Manager, with a copy to the Enhancement Program Consultant. The LPD Enhancement Program Manager will forward the approved preliminary engineering invoice and progress report to the State's Planning and Project Development Division for payment processing. The State will make payment directly to the consultant for the preliminary engineering.

SECTION 6. The Parties agree that all costs of this project shall be the sole responsibility of the City if the proposed project improvements are not awarded for construction by October 15, 2010. This includes repayment to the State of Federal Funds reimbursed for preliminary engineering costs and payment of all other expenses incurred as specified in of the original program agreement.

SECTION 7. Except as specifically amended by this supplemental agreement, all terms and conditions of the agreement executed by the City March 21, 2007 and by the State April 23, 2007, and Supplemental Agreement No. 1 executed by the City February 10, 2009 and by the State March 9, 2009, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be
executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the City this _____ day of _____, 20__.

WITNESS:

CITY OF LINCOLN

City Clerk

Mayor

EXECUTED by the State this _____ day of _____, 20__.

STATE OF NEBRASKA
DEPARTMENT OF ROADS
Jim Wilkinson, P.E.

Local Projects Engineer